



**Billing Code 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XG513**

**Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** NMFS announces the receipt of an exempted fishing permit application titled, “*Year-round Coastwide Midwater Rockfish EFP: Monitoring and Minimizing Salmon Bycatch When Targeting Rockfish in the Shorebased IFQ Fishery.*” The application, submitted by the West Coast Seafood Processors Association, Environmental Defense Fund, Oregon Trawl Commission, and Midwater Trawlers Cooperative, requests a permit to test whether removing certain gear, time, and area restrictions for vessels fishing under the Trawl Rationalization Program’s Shorebased Individual Fishing Quota Program may impact the nature and extent of bycatch of prohibited species (*e.g.*, Chinook salmon). This exempted fishing permit would allow participating groundfish bottom and midwater trawl vessels more flexibility than allowed in current regulations to target pelagic rockfish species, such as widow, chilipepper, and yellowtail rockfish. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

**DATES:** Comments must be received no later than 5 p.m., local time on [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2018-0112, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2018-0112*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments. The EFP application will be available under “Supporting Documents” through the same link.
- *Mail:* Submit written comments to Lynn Massey, West Coast Region, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802-4250.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and would generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender would be publicly accessible. NMFS would accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments would be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Lynn Massey, West Coast Region, NMFS, at (562) 436-2462, *lynn.massey@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR 600.745,

which allow NMFS Regional Administrators to authorize exempted fishing permits (EFPs) to test fishing activities that would otherwise be prohibited.

In 2017, NMFS permitted 32 vessels to fish under the 2017 Trawl Gear EFP. The EFP exempted limited entry bottom and midwater trawl vessels from the minimum mesh size requirement, and exempted limited entry bottom trawl vessels from the requirement to use selective flatfish trawl gear shoreward of the Trawl Rockfish Conservation Area (RCA) north of 42° North latitude (N. lat). The purpose of this EFP was to collect information on potential impacts to prohibited and protected species from modifying or eliminating certain gear and area regulations by allowing participants to configure their gear to re-establish a targeted rockfish fishery for widow, yellowtail, and chilipepper rockfish. From March 2017 to December 2017, a total of 11 limited entry groundfish bottom trawl vessels went on 63 EFP trips and landed 1,355 metric tons (mt) of groundfish, totaling \$1,613,178 in revenue. Prohibited species bycatch included five Chinook salmon and no sturgeon.

To continue collecting information on the impacts of modifying or eliminating gear and area regulations, the Pacific Fishery Management Council (Council) recommended and NMFS issued, a 2018 Trawl Gear EFP that expanded on the 2017 Trawl Gear EFP. As with the 2017 EFP, the 2018 EFP was intended to collect data on if and how the removal of certain gear, time, and area restrictions for the Shorebased Individual Fishing Quota (IFQ) Program may impact the nature and extent of prohibited species bycatch. In addition to the exemptions provided by the 2017 Trawl Gear EFP (*i.e.*, required minimum mesh size and requirement to use a selective flatfish trawl shoreward of the Trawl RCA and north of 42° N. lat.), the 2018 Trawl Gear EFP provided participating vessels exemptions from the following limited entry prohibitions:

- Fishing with midwater groundfish trawl gear north of 40°10' N. lat. in all areas (*i.e.*, seaward, within, and shoreward of the RCA) prior to May 15<sup>th</sup> each year;
- Fishing with midwater groundfish trawl gear south of 40°10' N. lat. within the boundaries of the Trawl RCA;
- Bringing a new haul onboard before a previous haul is stowed; and
- Carrying and fishing more than one type of groundfish trawl gear (midwater and bottom trawl gear) on the same trip.

The 2018 Trawl Gear EFP began on January 1, 2018. As of October 23, 2018, a total of 15 vessels (7 midwater-only trawlers, 4 bottom-only trawlers, and 4 that used both gears) have completed 289 EFP trips and landed approximately 9,000 mt of groundfish, totaling approximately \$7 million in revenue. Those vessels harvested 213 Chinook salmon and no sturgeon or coho salmon.

At the June 2018 Council meeting, the 2017 and 2018 Trawl Gear EFP applicants submitted a modified EFP application titled, “*Year-round Coastwide Midwater Rockfish EFP: Monitoring and Minimizing Salmon Bycatch When Targeting Rockfish in the Shorebased IFQ Fishery*” (herein referred to as the “2019 Trawl Gear EFP”). At the September 2018 meeting, the Council recommended that NMFS implement this EFP for 2019, and made a preliminary determination to recommend the EFP to NMFS for 2020. Separately, NMFS has issued a proposed trawl gear rule that would incorporate some of the exemptions included in the 2017 and 2018 EFPs into the groundfish regulations (Proposed rule: 83 FR 45396, September 7, 2018; final rule expected to publish in late November/early December 2018). The exemptions authorized under this 2019 Trawl Gear EFP will be finalized following the publication of the trawl gear rule so that the EFP does not include exemptions from requirements which may be

removed from regulations by the rule. The 2019 Trawl Gear EFP is anticipated to include, at a minimum, exemptions from the following limited entry restrictions:

- The requirement to use selective flatfish trawl gear, and the prohibition on using small footrope trawl gear, other than selective flatfish trawl gear, shoreward of the Trawl RCA between 42° N. lat. and 40°10' N. lat.;
- The prohibition on fishing with midwater groundfish trawl gear north of 40°10' N. lat. in all areas (*i.e.*, seaward, within, and shoreward of the RCA) prior to May 15<sup>th</sup> each year;
- The prohibition on fishing with midwater groundfish trawl gear south of 40°10' N. lat. within the boundaries of the Trawl RCA; and
- The prohibition on retaining certain prohibited species.

If NMFS approves this EFP, vessels fishing on an EFP trip with limited entry bottom trawl gear would be permitted to use any small footrope gear that meets the definition in regulations at § 660.11 shoreward of the Trawl RCA and between 42° N. lat. and 40°10' N. lat. Vessels fishing on an EFP trip with limited entry midwater trawl gear would be permitted to fish within all areas north of 40°10' N. lat. and within the boundaries and seaward of the Trawl RCA south of 40°10' N. lat. Midwater trawling will still be prohibited shoreward of the Trawl RCA south of 40°10' N. lat. Participating vessels would not be constrained to the Pacific whiting primary season dates in existing groundfish regulations (see CFR § 660.131). Participating vessels would be required to carry observers or use a NMFS-approved electronic monitoring system on 100 percent of trips, as is currently required in the IFQ program. Participating vessels would also be required to retain all salmon (excluding salmon already sampled by the West Coast Groundfish Observer (WCGOP) program) until offloading.

A goal of this EFP is to collect information on the effects of lifting the restrictions described above on bycatch, including bycatch of Endangered Species Act (ESA)-listed species. Previous analyses suggest that bycatch rates of ESA-listed salmon and green sturgeon could increase as a result of the increased and changes in gear configurations resulting from this EFP. However, because a targeted fishery for chilipepper, widow, and yellowtail rockfish has not existed in more than a decade, and because the current groundfish trawl fishery has changed considerably in recent years, available data may have limited utility for predicting current impacts to protected and prohibited species in fisheries conducted with the exemptions that would be allowed under the EFP. NMFS staff worked with the applicants to develop an EFP that would increase the ability of fishery participants to target pelagic rockfish species while also minimizing bycatch to the extent practicable and collecting information about bycatch. To address potential increased protected and prohibited species encounters, the EFP applicants proposed gear-based Chinook salmon bycatch limits for midwater trawl and bottom trawl EFP vessels in 2019 (based on the Council Groundfish Management Team's recommendations at the September 2018 meeting; Agenda Item I.8.a). Under this proposal, if Chinook salmon catch on EFP trips for either gear type reaches the applicable bycatch limit, NMFS would revoke the EFP for that gear type for the remainder of the year.

During discussion at the September 2018 meeting, the Council recommended simplifying the EFP terms by proposing that the Chinook bycatch limits be based only on the 42° N. lat. management line, rather than by gear type north and south of the 42° N. lat. line. This recommendation would reduce unnecessary complexity while still providing adequate safeguards for limiting salmon bycatch under the EFP. If this EFP is approved, NMFS would set a bycatch limit of 1,000 Chinook salmon north of 42° N. lat. and 100 Chinook salmon south of 42° N. lat.

for vessels declared into the EFP, regardless of gear type. If either of these bycatch limits are reached, NMFS would revoke the EFP for both gear types in the respective management area (*i.e.*, north or south of 42° N. lat.).

The application includes a requirement to retain and land salmon bycatch on all EFP trips, consistent with current requirements for vessels participating in the shoreside Pacific whiting fishery. The intent of this provision is to provide a complete census of salmon bycatch for each EFP trip and maximize the amount of biological and genetic salmon samples. At the September 2018 meeting, the Council expressed a desire to provide state fish and wildlife agencies the opportunity to sample salmon bycatch. This sampling effort would be in addition to the salmon sampling already conducted by WCGOP. To address the request for additional sampling, the Council requested that NMFS work with NOAA's Office of Law Enforcement and state fish and wildlife agencies to establish proper chain-of-custody and sampling protocols in the event that salmon are landed. NMFS is supportive of making salmon bycatch available to state fish and wildlife agencies for additional sampling, however NMFS is confident that WCGOP's sampling approach is sufficient to collect the necessary scientific information for assessing salmon bycatch.

The EFP applicants have not proposed a specific list of participating vessels, but rather are proposing that NMFS publish a public notice to gauge interest from limited entry groundfish midwater and bottom trawl vessels. Depending on the amount of interest and where vessels may be fishing, NMFS may need to limit participation by time and area to mitigate potential impacts.

Information collected under the EFP would be used to support analysis for potential new gear regulations and modifications to existing gear regulations. Because many of the current gear regulations have been in place for more than ten years, it is difficult for NMFS, the Council,

and industry to predict the impacts of removing these regulations. In the past ten years, the industry has changed significantly. Reduction in capacity, innovations in gear technologies, and changes in management have all contributed to these changes. This EFP would help demonstrate what potential impacts, if any, today's fleet may have if some of the current gear, area, and time regulations are modified from what is currently in regulation.

NMFS is proposing to approve the 2019 Trawl Gear EFP, covering all the exemptions stated above, following the conclusion of the public comment period and review of public comment. Pending approval, NMFS would issue the permits for the EFP to the vessel owner or designated representative as the "EFP holder." NMFS intends to use an adaptive management approach in which NMFS may revise requirements and protocols to improve the program without issuing another Federal Register Notice, provided that the modifications fall within the scope of the original EFP. In addition, the applicants may request minor modifications and extensions to the EFP throughout the course of research. NMFS may grant EFP modifications and extensions without further public notice if the changes are essential to facilitate completing the proposed research and result in only a minimal change in the scope or impacts of the initially approved EFP request.

NMFS analyzed the potential effects of implementing the 2018 Trawl Gear EFP in an environmental assessment (EA), dated December 2017 (Available at: <http://www.westcoast.fisheries.noaa.gov>). In that EA, NMFS stated that it anticipated issuing additional, similar, one-year EFPs that would cover a portion or all of the components discussed in the EA. Those EFPs would be supported by the analyses in the EA, as long as there were not substantial changes to the affected environment (*e.g.*, status of the stock), components of the EFP (*i.e.*, gear, area, and time restrictions), or unanticipated effects on the environment from



permitting fishing activities that were not discussed in the EA's analysis. Since the 2019 Trawl Gear EFP meets those criteria, NMFS does not anticipate any adverse environmental impacts from the 2019 Trawl Gear EFP beyond those analyzed in the EA for the 2018 Trawl Gear and future similar EFPs. NMFS welcomes public comment on the NEPA coverage for this EFP.

After publication of this document in the **Federal Register**, NMFS may approve and issue the EFP after the close of the public comment period. NMFS will consider comments submitted, as well as the Council's discussion at their September 2018 meeting, in deciding whether to approve the application as requested. NMFS may approve the application in its entirety or may make any alterations needed to achieve the goals of the EFP.

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

Dated: November 27, 2018.

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